

A Message from the Section Chair

Legislative/Regulatory Agenda

The coming year promises to be extremely important, as our federal and state governments continue to implement the Affordable Care Act and the New York Medicaid Redesign Team (“MRT”) initiatives. As New York State moves ahead with implementing health reform initiatives, our Section will continue to monitor and comment on proposed legislation and regulations. The state initiatives that warrant special attention in 2013 include the following.



- (1) CON and Governance Reform. On December 6, 2012, the Public Health and Health Planning Council (“PHHPC”) adopted a report entitled: “Redesigning Certificate of Need and Health Planning,” which contains twenty-three (23) recommendations. See http://www.health.ny.gov/facilities/public_health_and_health_planning_council/docs/con_redesign_report.pdf. This report, as its name implies, includes numerous recommendations designed to reform the Certificate of Need (“CON”) process, including what services are subject to CON review and the process for reviewing character and competence. What is not obvious from the title of the report is that it also includes significant proposed changes relating to oversight of provider governance. For example, this report recommends (i) requiring prior notice to the state Department of Health (“DOH”) before commencing a “passive parent” relationship, and giving DOH 90 days to recommend disapproval to PHHPC, (ii) “relaxing the prohibition on revenue sharing among providers that are not established as co-operators,” and (iii) supporting legislation to authorize DOH to appoint temporary operators of hospitals and freestanding clinics and to replace board members under certain circumstances related to patient safety and financial instability. The proposed state budget, released on January 22, 2013, includes legislation designed to implement some of the recommendations contained in this report. DOH is drafting proposed regulations to implement the remaining provisions. Our Section intends to play a role in commenting on these important provisions before they are adopted.

- (2) Executive Compensation: DOH, as well as other state agencies, has issued proposed regulations designed to implement the Governor’s Executive Order No. 38, which seeks to limit executive compensation and reduce administrative expenses for entities contracting with the state. Our Section submitted comments on the proposed and on the revised proposed regulations. The Section’s comments are listed on our website at www.nysba.org/HealthLawComments.
- (3) NY Practitioner Self-Referral Law: The Governor vetoed legislation developed by our Section that was designed to improve the NY Practitioner Self-Referral Law (see A3551-A/S4660). It is our intention to work with the Governor’s office, the Health Department and the Legislature to craft a solution to the issues raised by the Governor’s office so that this important legislation will be enacted into law.

Fall and Annual Meetings

Fall Meeting: Our Section held its Fall Meeting on October 26, 2012 in Albany, which focused on “New York Health Reform.” We were delighted that key officials from DOH and the state legislature could join us in panel discussions on various health reform initiatives, including proposals to reform New York laws and regulations that form barriers to achieving the “Triple Aim.” The materials for our Fall Meeting are available on our website at www.nysba.org/HLS2012FallMtg.

Annual Meeting: We held our Annual Meeting on January 23, 2013 in New York City. The topics included: “Health IT Update: Key Impediments to HITECH implementation and the View Ahead towards 2014,” “Two Current Issues in Legal Ethics: Rules for Internal Investigations and a Template for Avoiding Conflict,” “New York Health Planning, Certificate of Need and Governance Reforms,” “New York State Limits on Executive Compensation and Proposed Regulations,” “Accountable Care Organizations (ACOs): Regulatory and Strategic Issues and Implementation Challenges,” “Medical Indemnity Fund Update and Impact on Settlements,” and “New York’s Health Insurance Exchange and Its Impact on Providers, Payers and Employers.” Again, we were delighted that our panels included several state officials, as well as Susan Waltman, General Counsel for the Greater New York Hospital Association, Professor Stephen Gillers of NYU, several physicians involved in implementing ACOs, and distinguished members of our Section. Thanks are due to Kathleen Burke of NY Presbyterian Hospital,

Margaret Davino of Kaufman, Borgeest & Ryan, and Julia Goings-Perrot of Tarshis Catania for organizing the program. The materials for our Annual Meeting are posted on our website at www.nysba.org/HLSAM2013Materials.

At the Annual Meeting, the Section elected its officers for the term June 2013–May 2014. Please join me in congratulating our incoming Section officers, and wishing them well:

- Chair:** Kathleen M. Burke
NY Presbyterian Hospital
- Chair-Elect:** Margaret J. Davino
Kaufman Borgeest & Ryan, LLP
- Vice-Chair:** Kenneth R. Larywon
Martin Clearwater & Bell, LLP
- Secretary:** Raul A. Tabora, Jr.
Bond Schoeneck & King
- Treasurer:** Lawrence R. Faulkner
ARC of Westchester

Committees

We are in the process of reorganizing certain of the committees and their missions. If you have any suggestions for improving the structure or function of an existing committee, or wish to suggest formation of a new committee, I encourage you to contact me. The Section's committees, their chairs and member rosters are listed at www.nysba.org/HealthLawCommittees. I also encourage all Section members to join a standing committee and to contribute by speaking at CLE programs, commenting on proposed legislation or regulations, or writing an article for the *Health Law Journal*.

I look forward to working with all of you in the coming year. It is certainly an exciting time to be a health care lawyer!

Ellen V. Weissman, Chair
Health Law Section

The NYSBA Family Health Care Decisions Act Information Center

The NYSBA Health Law Section has a web-based resource center designed to help New Yorkers understand and implement the Family Health Care Decisions Act—the law that allows family members to make critical health care and end-of-life decisions for patients who are unable to make their wishes known.

www.nysba.org/fhcda